

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

SWEENEY GILLETTE, *et al.*,

Plaintiffs,

v.

MALHEUR COUNTY, *et al.*,

Defendants.

Case No. 2:14-cv-01542-SU

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Patricia Sullivan issued Findings and Recommendation in this case on May 3, 2016. Dkt. 84. Judge Sullivan recommended that all of the Defendants' motions to dismiss be granted and the case be dismissed with prejudice.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

Plaintiffs timely filed an objection.¹ Dkt. 86. Plaintiffs object to Judge Sullivan’s recommendation that the Second Amended Complaint be dismissed with prejudice and without leave to amend. Plaintiffs make some general and conclusory arguments on the merits, but do so in support of their argument that they should be granted leave to replead. Accordingly, the Court reviews *de novo* Judge Sullivan’s recommendation that Plaintiffs not be allowed to file a third amended complaint and that the case be dismissed with prejudice. The Court has reviewed the documents filed before Judge Sullivan, the Findings and Recommendation, Plaintiffs’ objection, and Defendants’ responses. The Court agrees with Judge Sullivan’s reasoning regarding the futility of permitting a third amended complaint and ADOPTS that portion of the Findings and Recommendation.

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ.

¹ Defendants argue that Plaintiffs’ objections were not timely because they were filed more than 14 days from when Judge Sullivan issued her Findings and Recommendation. Federal Rule of Civil Procedure 6(d), however, provides that when service is provided by certain means, including through the Court’s electronic filing system, three days are added to the deadline. Judge Sullivan issued her Findings and Recommendation on May 3, 2016, and it was served on the parties through the Court’s electronic filing system. Accordingly, Plaintiffs’ objections were due May 20, 2016, which is the date they were filed. Plaintiffs’ objections are timely.

P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

For the remainder Judge Sullivan’s Findings and Recommendation to which neither party has objected, including Judge Sullivan’s reasoning and conclusions dismissing Plaintiffs’ federal claims for relief and declining supplemental jurisdiction over Plaintiffs’ state claims for relief, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

Judge Sullivan’s Findings and Recommendation (Dkt. 84) is ADOPTED. Defendants’ motions to dismiss (Dkts. 44, 50, 53, 55, and 58) are GRANTED. This case is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 6th day of June, 2016.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge